

## PLANNED DEVELOPMENT PERMIT

<b>FILE NO.</b>	<b>PD10-025</b>
<b>LOCATION OF PROPERTY</b>	<b>Southeast corner of Airport Parkway and Old Bayshore Highway (44 AIRPORT PKWY)</b>
<b>ZONING DISTRICT</b>	<b>IP(PD) Planned Development</b>
<b>ZONING FILE NUMBER</b>	<b>PDC10-003</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>IP-HE</b>
<b>PROPOSED USE</b>	<b>Planned Development Permit to demolish existing buildings on site and construct a new approximately 88,000 square-foot building, including an 8-story office tower at approximately 160 feet in height for the purposes of relocating a cardroom to the subject site, and operating a public eating establishment and a drinking establishment, all with late night hours of operation on a 6.08 gross acre site</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Re-Use NSJ Eir Res #72768</b>
<b>OWNER/ADDRESS</b>	<b>Airport Parkway Two, LLC 427 N. Tatnall Street Wilmington DE 19801</b>

### FACTS

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of IP-HE Industrial Park/Preferred Hotel Site on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The site is located within the Rincon South Planned Community.
3. The site is zoned IP(PD) Planned Development.
4. The subject lot is approximately 6.08 acres.
5. The site is currently developed with two office buildings totaling approximately 103,378 square feet.
6. This is a Planned Development Permit to demolish existing buildings on site and construct a new approximately 88,000 square-foot building, including an 8-story office tower at approximately 160 feet in height for the purposes of relocating a cardroom to the subject site, and operating a public eating establishment and a drinking establishment, all with late night hours of operation on a 6.08 gross acre site.

7. Parking required per the approved Planned Development Zoning is per Title 20 which requires 492 spaces. Parking provided with this permit is 539 through a mix of uniform-size spaces and valet parking spaces.
8. The proposed project will meet all of the development regulations set forth in Planned Development Zoning, PDC10-003, including but not limited to height and setbacks.
9. The removal of 60 ordinance sized trees is proposed as part of the subject development.
10. An Initial Study was prepared for this project, and the Director of Planning adopted an Addendum to the North San Jose EIR.
11. The project proposes demolition of two existing office buildings referenced above.

## FINDINGS

The Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts, that:

1. The Planned Development Permit, as issued, furthers the policies of the General Plan, in that:
  - a. The proposed development conforms to the site's General Plan Land Use/Transportation Diagram designation in that the proposed uses are consistent with those called for by the IP-HE designation and are compatible with the surrounding area.
  - b. The project maintains the existing pattern of development in the immediate vicinity.
  - c. The consistent architectural themes have been integrated into the design.
  - d. The building scale does not overwhelm the area.
2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property in that:
  - a. The proposed project conforms to the approved General Development Plan and associated development standards.
3. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious, in that:
  - a. The architectural elements of the proposed project are integrated into a harmonious whole.
  - b. On-site structures are compatible in terms of height and massing.
4. The environmental impacts of the project including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor, green house gases, which, even if insignificant for the purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties. Any potential negative effects on adjacent property or properties have been addressed in that:
  - a. The environmental impacts of this project were addressed by an Initial Study and addendum thereto prepared for the previously approved project, PDC06-130. Based on the analysis in the Initial Study and addendum thereto, it has been concluded that the North San José Area Development Policy Update Final EIR adequately addresses the environmental effects of the proposed project, and project would not result in significant environmental

effects that are not already identified in the Final EIR. The project, therefore, meets the eligibility requirements for preparation of an addendum and does not require a supplemental EIR or Negative Declaration.

Further, the Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts, that:

Under the provisions of Section 20.80.400(A) of the San José Municipal Code, except as specifically exempted by Section 20.80.450, no demolition permit or removal permit shall be issued unless and until a Development Permit which specifically approves such demolition or removal has been issued and has become effective pursuant to the provisions of Chapter 20.100.

- a. The Director of Planning has considered the following in evaluating the proposed demolition:
  - i. The failure to approve the permit would result in the creation of continued existence of a nuisance, blight or dangerous condition.
  - ii. The failure to approve the permit would jeopardize public health, safety or welfare.
  - iii. The approval of the permit would not negatively impact the supply of existing housing stock in the City of San José.
  - iv. Both inventoried and non-inventoried buildings, sites and districts of historical significance will not be negatively impacted.
  - v. Rehabilitation or reuse of the existing building would not be feasible
  - vi. The approval of the demolition of the building should facilitate a project that is compatible with the surrounding neighborhood.
- b. Further, the Director of Planning concludes and finds, based on the analysis of the above facts, that:
  - i. The proposed project conforms in all respects to the provisions of Title 20 of the San José Municipal Code.
  - ii. The proposed project is in conformance with the California Environmental Quality Act.
  - iii. The benefits of permitting the demolition, removal or relocation of the subject buildings outweigh the impacts of the demolition, removal or relocation.

Further, the Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts, that:

- a. The removal of 60 ordinance sized trees is proposed as part of the subject development. The trees affected are in such a location in such surroundings that their removal would not significantly frustrate the purposes of Section 13.32.010 of the San Jose Municipal Code in that the location of the trees with respect to the proposed improvement unreasonably restricts the economic development of the subject property.
- b. Based upon the above-stated findings and subject to the conditions set forth below, the Director of Planning approves, pursuant to Section 20.80.440(B) and Chapter 20.100 of the San José Municipal Code, the subject Planned Development Permit to demolish existing buildings on site and construct a new approximately 88,000 square-foot building, including an 8-story tower (measuring approximately 62 feet x 62 feet and

reaching 160 feet in height) for the purposes of relocating a cardroom to the subject site, and operating a public eating establishment, a drinking establishment, all with late night hours of operation on a 6.08 gross acre site

**APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
3. **Use Allowance:** This Planned Development Permit authorizes the following uses to occur on the subject site:
  - a. Relocated Cardroom
  - b. Public Eating Establishment(s)
  - c. Drinking Establishment(s)
  - d. Late Night Hours of Operation
  - e. Office and Meeting space
4. **Conformance to Plans.** Development of the site shall conform to approved Planned Development plans entitled "A Planned Development Submittal Package For: Airport Parkway Two, LLC" last dated December 3, 2010, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04), with the exception of any subsequently approved changes.
5. **Permit Adjustment Required.** Within three (3) months of approval of this permit, the developer shall submit a Permit Adjustment detailing the tree removal/replacement program, and including an alternative site plan for the parking lot integrating additional trees into the parking lot, to the discretion of the Director of Planning, in anticipation of Phase II of the project, including a hotel and parking garage, not moving forward within 36 months of the completion of Phase I, the casino and tower. Should Phase II of the project not commence construction within 36 months of the completion of Phase I, said approved Permit Adjustment with the alternative parking lot planting plan shall be implemented.

6. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Planned Development Permit incorporated by reference in this Permit in accordance with Chapter 20.100 of the San Jose Municipal Code.
7. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
8. **Permit Expiration.** This Planned Development Permit shall automatically expire four (4) years from and after the date of issuance hereof by said Director, if within such four (4) years period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Planned Development Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20 of the San Jose Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Permit.
9. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
10. **Revocation.** This Planned Development Permit is subject to revocation for violation of any of its provisions or conditions.
11. **Planned Development District Effectuated.** Once this Planned Development Permit is accepted, the use of territory not covered by the permit shall only be land uses consistent with the Planned Development Zoning District and only upon issuance of a Planned Development Permit for those uses.
12. **Additional Permits.** The permittee shall obtain all permits and approvals required by law, including, but not limited to, permit/s from the Police Department approval from the Fire Department and a license from the state of California Department of Alcoholic Beverage Control (ABC).
13. **Green Building Requirements.** The development is subject to City Council Policy 6-32, Private Sector Green Sector Policy as a Commercial/Industrial building exceeding 25,000 square feet and must meet LEED Silver.
14. **Cardroom Operation:** The cardroom operation shall comply with all provisions of Title 16 of the San Jose Municipal Code, as amended, in all aspects. If any condition in this permit conflicts with Title 16, Title 16 provisions shall prevail.
15. **Hours of Operation.** Hours of operation of the Cardroom, Public Eating Establishment(s), and Drinking establishment(s) include 24-hours per day, seven (7) days a week.

16. **Service of Alcohol.** Service of alcohol shall be in conformance with the requirements of any license issued by the California Department of Alcohol Beverage Control.

**Recycling.** In accordance with the San Jose Municipal Code, Chapter 9,10 – Solid Waste Management, it is required that scrap construction and demolition debris be recycled instead of disposing of it in a landfill. An infrastructure exists within San José to accommodate such recycling efforts. Integrated Waste Management staff can provide assistance on how to recycle construction and demolition debris from the project, including information on where to conveniently recycle the material. Additional information may be found at <http://www.sjrecycles.org/construction-demolition/cddd.asp> or by contacting the Commercial Solid Waste Program at (408) 535-8550.

17. **Construction Impact Mitigation Measures.** The applicant is responsible for notifying all contractors of the conditions of this permit and that they shall perform construction activities in compliance with these conditions, or be subject to enforcement action.

- a. *Compliance.* The applicant shall ensure that the following construction impact mitigation measures are fully complied with throughout the duration of all construction activities associated with this project and related off-site construction work. Failure to comply with these conditions by the applicant, their contractors or subcontractors shall be cause for shutdown of the project site until compliance with the following conditions can be ensured by the City. These construction impact mitigation measures shall be included in all contract documents for the project to ensure full disclosure to contractors and subcontractors.
- b. *Enforcement.* The Director of Planning, Building and Code Enforcement may order an immediate halt to construction activities on the project site any time that the Director determines that the project is not in substantial conformance with the requirements of this Permit. Within seven days of ordering such a halt to construction, the Director of Planning, Building and Code Enforcement shall issue a Notice of Noncompliance in conformance with Section 20.100.320 of Title 20 of the San José Municipal Code indicating the specific area(s) of noncompliance and providing notice that the Director may issue an Order to Show Cause why the development permit shall not be revoked, suspended, or modified if the noncompliance is not corrected.
- c. *Fencing.* The site shall be wholly enclosed by security fencing where the site is accessible by vehicles. The gates to the project site shall remain locked during times when no construction activity is occurring.
- d. *Assembly Area.* Workers shall not arrive to the site until the opening of the project gates. The applicant shall designate a location without adjacent residential or hotel for workers to wait prior to the opening of the project gates.
- e. *Street Cleaning and Dust Control.* During construction, the developer shall damp-sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
- f. *Construction Watering.* The proposed project shall use recycled water for all grading, dust control, and other non-potable approved uses during construction to the satisfaction of the Director of Public Works.

18. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, and is subject to the following requirements to the satisfaction of the Director of Public Works:

- a. **Minor Improvement Permit:** The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
- b. **Transportation:**
  - i. An area wide traffic impact analysis was prepared as part of the North San Jose Area Development Policy, adopted June 2005. Traffic impacts were identified and resulted in an area wide traffic impact fees. This project is covered under the North San Jose EIR.
  - ii. This project was required to complete a trip generation rate study and said study was submitted on 12/13/10. This project will receive credit for the existing two office buildings totaling 103,378 square feet. If the trip generation rate study indicates project trips exceeding the credit, the applicant will be responsible to pay for traffic impact fees prior to the issuance of Building Permit. The total fees due, if any, will be forwarded to Planning as soon as it becomes available.
- c. **Grading/Geology:**
  - i. A grading permit is required prior to the issuance of a Public Works Clearance.
  - ii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
  - iii. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
  - iv. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- d. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges. Post-construction treatment control measures, shown on the project's Stormwater Control Plan, shall meet the numeric sizing design criteria specified in City Policy 6-29.

- i. The Stormwater Control Plans has been reviewed and is in conformance to the Council Policy 6-29.
- ii. Final inspection and maintenance information on the post-construction treatment control measures must be included on the final Stormwater Control Plan
- e. ***Flood: Majority in Zone AH, Elevation 39.00' North American Vertical Datum of 1988 (NAVD88), Portion in Zone AO, Depth 1':***
  - i. **For the proposed Cardroom and Tower:**
    - (1) Elevate or Floodproof the lowest floor above 39.00' NAVD88 or more than one foot above the highest existing adjacent grade to the proposed structure, whichever is greater. For insurance rating purposes, the building's floodproofed design elevation must be at least one foot above the base flood elevation to receive rating credit.
    - (2) An Elevation Certificate (FEMA Form 81-31) for each structure, based on construction drawings is required prior to issuance of a building permit. Consequently, an Elevation Certificate based on finished construction is required prior to issuance of an occupancy permit..
    - (3) If the structure is to be floodproofed, a Floodproofing Certificate (FEMA Form 81-65), floodproofing details, and if applicable, a Flood Emergency Operation Plan and an Inspection & Maintenance Plan are required prior to the issuance of a Public Works Clearance..
    - (4) Building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities must be elevated above the base flood elevation or protected from flood damage.
    - (5) The project site is not subject to the blockage requirements of the Updated 2006 North San Jose Floodplain Management Study.
  - f. ***Sewage Fees:*** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
  - g. ***Assessment:*** This project is located within Maintenance District 21 which maintains the enhanced landscaped median islands on Airport Parkway, Metro Drive and Skyport Drive within the boundaries of the district. Properties within the district pay for the maintenance through annual assessments placed on the County property tax bills which are adjusted annually by the Consumer Price Index. The 2009-10 assessment for APN 230-29-065 is \$2,540.52 and is calculated at approximately \$470 per acre. Future year assessments will continue to be collected through the County property tax bills.
  - h. ***Storm Drain Easement:***
    - i. **The project proposes a landscape fountain within the existing 10' public storm drainage easement at the corner of Airport Parkway and Old Bayshore Highway. In the event that the City needs to repair and/or replace the storm system under the fountain, the property owner shall be responsible for the removal and replacement of the fountain at their sole cost**
    - ii. Due to the close distance between the existing storm pipe and proposed building, a study to evaluate the potential structural impact due to pipe leakage should be



submitted at improvement plan stage. The study should consider existing pipe condition and possible mitigation such as pipe lining to prevent foundation damage in the event of storm system failure.

i. **Street Improvements:**

- i. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
- ii. Remove and replace broken or uplifted curb, gutter, and construct 12' wide sidewalk along project frontages. Public Sidewalk Easement will be required. A 10' wide sidewalk is allowed behind the fountain area at the corner of Airport Parkway and Old Bayshore Highway.
- iii. Proposed driveway width to be 32'.
- iv. Re-construct ADA handicap ramps (2 ramps, including receiving ramp) across Old Bayshore Highway, at Airport Parkway.
- v. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- vi. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
- j. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.

19. **Avigation Easement.** Prior to issuance of a building permit for new construction, the property owner shall dedicate an avigation easement to the City of San Jose setting forth acceptance of aircraft noise impacts and elevation restrictions. Contact Cary Greene, Airport Planner, at (408) 392-3623 or [cgreene@sjc.org](mailto:cgreene@sjc.org) to initiate the easement dedication process..

20. **FAA Clearance.** Prior to issuance of a Building Permit, a "Determination of No Hazard" needs to be issued by the FAA. Any conditions set forth in an FAA no-hazard determination, such as, but not limited to, roof-top lighting/markings or subsequent construction notifications, shall be completed prior to Building Permit issuance or, if applicable, Occupancy Permit issuance.

21. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. **Construction Plans.** This permit file number, PD10-025, shall be printed on all construction plans submitted to the Building Division.
- b. **Americans with Disabilities Act.** The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- c. **Emergency Address Card.** The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- d. **Street Number Visibility.** Street numbers of the buildings shall be easily visible at all times, day and night.

- e. **Construction Plan Conformance.** A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
22. **Fire Clearance for Issuing Permits.** The Fire Department's review was limited to verifying compliance of the project to Article 9, Appendix III-A, and Appendix III-B of the 2001 California Fire Code with City of San Jose Amendments (SJFC). Compliance with all other applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.
23. **Fire Flow.** Required fire flow for the site, based on Building Type 1B is 2,750 GPM, or as otherwise approved in writing by the Fire Chief. Provide a copy of the letter from San Jose Water Co. that indicates the water flow available
24. **Fire Hydrants.** Placement of Fire Hydrants shall be in conformance with current regulations related to Building Type and fire flow. Final determination of number and location shall be as required per the Fire Marshall.
25. **Emergency Vehicle Access.** Width, length, and grade of the fire apparatus access roads, streets, avenues, and the like. Every portion of all building exterior walls shall be within 150 feet of an access road. To the satisfaction of the Fire Chief, the fire access shall:
- a. Fire Access shall be in accordance with all Fire Apparatus access requirements: designed to sustain 69,000lbs, all whether, be 20 feet wide clearance, 13 feet 6 inches high vertical clearance, be 30 feet inside turning radius, and 50 feet outside turning radius. E.V.A. shall be wetted for four days continuously before calling SJFD Fire Prevention (535-7751) to witness a certified truck with minimum 69,000lbs drive on it.
26. **Recycled Water.** The irrigation system shall be designed and installed to allow for the future use of recycled water. The irrigation system shall be metered separately from the domestic water supply system, shall have no on-site cross-connections to the domestic water supply system and shall meet all other legal requirements necessary to allow conversion of the irrigation system from potable to recycled water supply as soon as recycled water is available. No person shall use, permit or allow the use of potable water to irrigate any outdoor landscaping, where an irrigation system has been installed to allow for use of recycled water and recycled water is available to the property for irrigation use.
27. **Landscaping.** Planting and irrigation are to be provided as indicated on the approved plans. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced. Permanent irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
28. **Landscape Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
29. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San Jose

Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect prior to Certificate of Occupancy.

30. **Storm Water Stenciling.** All drain inlets shall be labeled "No Dumping—Flows to Bay." Please contact the City of San José, Department of Public Works, at (408) 277-5161 to obtain free stencils.
31. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set.
32. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
33. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
34. **North San José Final EIR Mitigations Measures.**
  - a. The project shall comply with the City's *Outdoor Lighting Policy* (Policy 4-3), which includes the use of low-pressure sodium outdoor security lighting on-site along walkways, entrance areas, common outdoor use areas, and parking areas.
  - b. If any significant cultural materials as identified in the Addendum are exposed or discovered during site preparation or subsurface construction activities, operations should stop within 50 feet of the find and a qualified professional archaeologist contacted for evaluation and further recommendations. The archaeologist's recommendations shall be presented to the Director of Planning, Building, and Code Enforcement for consideration. Potential recommendations could include evaluation, collection, recordation, analysis, and reporting of any significant cultural materials.
  - c. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his/her authority, the Native American Heritage Commission shall be notified to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
  - d. If the Director of Planning, Building, and Code Enforcement finds that the archaeological discovery is not a significant resource, work would resume only after the submittal of a preliminary archaeological report and after provisions for reburial and ongoing monitoring are accepted. A final report would be prepared when a find is determined to be significant archaeological site, and/or when Native American remains are found on the site. The final report would include background information on the completed work, a description and list of identified resources, the disposition and curation of these resources, any testing, other recovered information, and conclusions.

- e. The project shall implement measures identified by BAAQMD to reduce emissions, which are proposed to include, but are not limited to, the following:
  - i. Providing secure and conveniently placed bicycle parking;
  - ii. Allowing only natural gas fireplaces, pellet stoves, or EPA-Certified wood-burning fireplaces or stoves in residences. Conventional open-hearth fireplaces should not be permitted. EPA-Certified fireplaces and fireplace inserts are 75 percent effective in reducing emissions from this source;
  - iii. Providing direct, safe, attractive pedestrian access from project site to transit stops and adjacent development;
  - iv. Utilizing reflective (or high albedo) and emissive roofs and light colored construction materials to increase the reflectivity of roads, driveways, and other paved surfaces, and include shade trees near buildings to directly shield them from the sun's rays and reduce local air temperature and cooling energy demand; and
- f. The BAAQMD has prepared a list of feasible construction dust control measures that can reduce construction impacts to a less than significant level. The following construction practices will be implemented during construction on the project site:
  - i. Water all active construction areas at least twice daily.
  - ii. Water or cover stockpiles of debris, soil, sand, or other materials that can be blown by the wind.
  - iii. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
  - iv. Sweep daily (preferably with water sweepers) all paved access roads, parking areas, and staging areas at construction sites.
  - v. Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
  - vi. Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.
  - vii. Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.)
  - viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
  - ix. Replant vegetation in disturbed areas as quickly as possible.
- g. Pre-construction surveys for nesting raptors shall be completed by a qualified ornithologist to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys shall be completed no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys shall be completed no more than (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the State of California, Department of Fish and Game, designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall

submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Department of Planning, Building, and Code Enforcement prior to the issuance of any grading or building permit.

- h. The proposed project shall replace trees removed at the following ratios:

<b>Table 4.4-2 Standard Tree Replacement Requirements</b>		
<b>Diameter of Tree to be Removed</b>	<b>Non-Native</b>	<b>Minimum Size of Each Replacement Tree</b>
18 inches or greater	4:1	24-inch box
12 – 18 inches	2:1	24-inch box
Less than 12 inches	1:1	15-gallon container
<b>Notes:</b> X:X = Tree replacement to tree loss ratio Trees greater than 18-inches in diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.		

- i. Since the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building, and Code Enforcement, at the development permit stage:
  - ii. The size of a 15-gallon replacement tree can be increased to 24-inch box and count as two replacement trees.
  - iii. An alternative site(s) shall be identified for additional tree planting. Alternative sites may include local parks or schools or installation of trees on adjacent properties for screening purposes to the satisfaction of the Director of the Department of Planning, Building, and Code Enforcement.
  - iv. A donation of \$300 per mitigation tree to Our City Forest for in-lieu off-site tree planting in the community. These funds will be used for tree planting and maintenance of planted trees for approximately three years. A donation receipt for off-site tree planting will be provided to the Planning Project Manager prior to issuance of a development permit.
  - v. In the event that any trees are being retained on site, the project proponent shall retain a consulting arborist prior to any ground disturbance activities. The consulting arborist shall develop a tree protection plan outlining specific procedures to ensure that trees on adjacent properties are protected during the construction phase.
  - vi. For retained trees in the immediate vicinity of construction or demolition areas, problems of soil compaction within the root zone resulting from heavy construction equipment shall be prevented. In order to minimize construction and demolition impacts to remaining trees, barrier fencing shall be installed around the dripline of all retained trees or at the edge of construction areas. Any construction or demolition activities taking place within the dripline of retained trees shall be done by hand or with light equipment that does not cause soil compaction. All fencing shall remain in

place throughout the construction phase of the project. The type of fencing to be utilized shall be at the direction of the consulting arborist.

- vii. Any limb or root pruning to be conducted on retained trees shall be approved and supervised by the consulting arborist and shall follow best management practices develop by the International Society of Arboriculture.
- viii. Supplemental irrigation to retained trees shall be applied as determined by the consulting arborist.
- ix. If any of the retained trees should be damaged during the construction phase, they shall be evaluated at the earliest possible time by the consulting arborist so that appropriate measures can be taken.
- i. Design and construct buildings in accordance with a design-level geotechnical investigation prepared for the project site, which identifies the specific design features that will be required for the project, including site preparation, compaction, trench excavations, foundation and subgrade design, drainage, and pavement design. The geotechnical investigation shall be reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance for the project.
- j. The project shall be designed and constructed in conformance with the Uniform Building Code guidelines for Seismic Zone 4 to avoid or minimize potential damage from seismic shaking and seismic-related hazards on the site.
- k. All construction joints and basement walls below the design ground water level will be waterproofed to limit moisture infiltration. A waterproof specialist will be retained to design the waterproofing system, including the under-mat waterproofing, waterstops and other waterproofing measures at construction joints, and a waterproofing design for all below-grade walls. The use of drainage systems above design ground water levels and designing for hydrostatic pressures should be evaluated in the design-level investigation.
- l. Implement standard grading and best management practices to prevent substantial erosion and siltation during development of the site.
- m. The project would be designed and constructed in conformance with the Uniform Building Code guidelines for Seismic Zone 4 to avoid or minimize potential damage from seismic shaking and seismic-related hazards on the site.
- n. Upon demolition, analytical testing of soil and groundwater shall be conducted for hazardous substances (including heavy metals, arsenic, chromium, petroleum hydrocarbons, and pesticides). If results indicate the presence of such materials in excess of applicable health standards, a health and safety plan which includes site remediation measures shall be prepared and implemented to reduce contamination to acceptable levels and assure the safety of construction workers, in accordance with state and local regulatory requirements.
- o. If the Phase II finds contaminant levels above PRG thresholds, a soil management plan (SMP) shall be developed to establish management practices for construction worker health and safety during earthwork activities at the project site. The SMP shall address appropriate protocols for handling and/or disposing the soil that shall be encountered during construction. The SMP will be submitted to San José's Environmental Services Department prior to issuance of grading permits.

- p. Asbestos surveys will be conducted for buildings on-site. In accordance with the National Emissions Standards for Hazardous Air Pollutants (NESHAP) guidelines, all potentially friable asbestos-containing materials will be removed prior to building demolition.
- q. A lead survey of painted surfaces and soil around buildings on-site will be completed prior demolition. Requirements in the California Code of Regulations will be followed during demolition activities, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings will be disposed of at landfills that meet acceptance criteria for the waste being disposed.
- r. All demolition activities would be undertaken according to OSHA and EPA standards to protect workers, and off-site occupants from exposure to asbestos and lead based paint. Specific measures include air monitoring during demolition of existing buildings and construction activities.
- s. Building materials classified as hazardous materials would be disposed of in conformance with federal, state, and local laws.
- t. Comply with the City of San José *Special Flood Hazard Area Regulations* and City's Floodplain Management Ordinance.
- u. Obtain an Elevation Certificate (FEMA Form 81-31) for the proposed structure, based on construction drawings and a Flood Proofing Certificate (FEMA Form 81-65), prior to issuance of building permits and occupancy permits.
- v. Elevate building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities above the base flood elevation or otherwise protected from flood damage.
- w. Compliance with the NPDES General Construction Activity Stormwater Permit administered by the Regional Water Quality Control Board. Prior to future construction or grading, applicants shall be required to file a "Notice of Intent" (NOI) to comply with the General Permit and prepare a Stormwater Pollution Prevention Plan (SWPPP) that addresses measures that would be included in the project to minimize and control construction and post-construction runoff. Copies of the SWPPP shall be submitted to the City of San José Department of Public Works. The following measures typically are included in a SWPPP:
  - i. Preclude non-stormwater discharges to the stormwater system.
  - ii. Incorporate effective, site-specific Best Management Practices for erosion and sediment control during the construction and post-construction periods.
  - iii. Cover soil, equipment, and supplies that could contribute to non-visible pollution prior to rainfall events or monitor runoff.
  - iv. Perform monitoring of discharges to the stormwater system.
- x. The project will comply with the NPDES Municipal Permit by incorporating BMPs and TCMs to control non-point pollution. The proposed project may include but is not limited to the following BMPs and TCMs:
  - i. Installing bioswales in new landscape and surface parking areas to treat runoff prior to discharge to the stormwater system;

- ii. Installation of landscaping that will facilitate the infiltration of stormwater;
  - iii. Use of landscape species that minimize irrigation, runoff, pesticide and fertilizer applications;
  - iv. Design landscape areas to be lower in elevation than surrounding paved areas;
  - v. Planting new trees within 30 feet of impervious surfaces;
  - vi. Use efficient irrigation systems to minimize runoff;
  - vii. Stormwater catch basins will be stenciled to discourage illegal dumping;
  - viii. Use microretention techniques, such as tree well filters in parking and landscaped areas;
  - ix. Installation of oil/water separators in parking structures, if required/allowed;
  - x. Cover dumpsters and other storage areas and/or protect by a berm or curb;
  - xi. Use source control best management practices (in vehicle areas, roofs, gutters, downspouts, dumpster/trash areas, floor drains, elevator shaft drains, air conditioning condensate, and outdoor material storage, etc.);
  - xii. Maintenance of landscaped areas as necessary to maintain soil structure and permeability;
  - xiii. Site maintenance, including routine catch basin cleaning; and
  - xiv. Maintenance of landscaping with minimal pesticide use, including landscape maintenance techniques listed in the Fact Sheet on Landscape Maintenance Techniques for Pest Reduction prepared by the Santa Clara Valley Urban Runoff Pollution Prevention Program.
  - xv. Landscape designs for stormwater treatment (including bio-swales and landscape islands in the parking lots) that meet the requirements of City Council Policy 6-29 and the City's NPDES permit will be submitted with the development plans and must be approved by the Planning Department prior to issuance of a Planned Development permit.
- y. Aviation Policy No. 47 states that development in the vicinity of airports should be regulated in accordance with Federal Aviation Administration guidelines to maintain the airspace required for the safe operation of these facilities.
- z. Consistent with ALUC Policy G-3 and San José 202 General Plan Aviation Policy No. 49 dedicates easements for (1) aviation, and (2) obstruction or other similar clearance easement to the City as conditions of approval for development on the site. The obstruction easement will restrict development heights to the height approved by the FAA in its "No Hazard" determination.
- aa. As conditioned in the FAA's Determination of No Hazard, buildings must be marked and/or lighted in accordance with FAA advisory Circular 70/7460-1 70/7460-1K, Obstruction Marking and Lighting, red lights – Chapters 4, 5 (red), and 12.
- bb. The applicant will develop a construction mitigation plan in close coordination with adjacent businesses and noise-sensitive land uses. The construction mitigation plan shall identify a procedure for coordination with the adjacent noise sensitive facilities so that construction activities can be scheduled to minimize noise disturbance. The mitigation



plan shall be incorporated into the PD Permit. The construction mitigation plan will consider the following available controls to reduce construction noise levels as low as practical.

- cc. Noise generating activities at the construction site or in areas adjacent to the construction site associated with the project in any way will be restricted to the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 5:00 p.m. on Saturdays. No construction activities will occur on Sundays or holidays.
  - dd. All internal combustion engine driven equipment will be equipped with intake and exhaust mufflers which are in good condition and appropriate for the equipment.
  - ee. Stationary noise generating equipment will be located as far as possible from sensitive receptors when sensitive receptors adjoin or are near a construction project area.
  - ff. "Quiet" air compressors and other stationary noise sources will be used where technology exists.
  - gg. The contractor shall prepare a detailed construction plan identifying the schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with the adjacent noise sensitive facilities so that construction activities can be scheduled to minimize noise disturbance.
  - hh. A "disturbance coordinator" will be responsible for responding to any local complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and will require that reasonable measures warranted to correct the problem be implemented.
  - ii. Conspicuously post a telephone number for the disturbance coordinator at the construction site.
35. **Permit Posting.** Prior to commencement of and during removal of any ordinance-size tree pursuant to this Permit, the applicant shall post on the site, or cause to be posted, a copy of this validated Permit in conformance with the following
- a. The copy of the permit shall be a minimum size of 8.5 by 11.0 inches; shall be posted at each public street frontage within 2 feet of the public sidewalk or right-of-way; and shall be posted in such a manner that the permit is readable from the public sidewalk or right-of-way; or
  - b. If the site does not have a public street frontage, a copy of the permit shall be posted at a location where the permit is readable from a common access driveway or roadway.
35. **Presentation of Permit.** During removal of any ordinance-size tree pursuant to this permit, the applicant shall maintain the validated permit on the site and present it immediately upon request by the Director of Planning, Building and Code Enforcement, Police Officers or their designee.
36. **Demolition Permit.** Obtainment of a Demolition Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions. No demolition of the structure may be implemented unless and until the Building Division issues a Demolition Permit pursuant to Section 301 of the Uniform Building Code, as adopted pursuant to the provisions of Chapter 17.04 of Title 17 of the San José Municipal Code.

37. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
38. **Roof Equipment.** All proposed roof equipment shall be screened from view and shall be subject to separate approvals and to the discretion of the Director of Planning, Building, and Code Enforcement.
39. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
- a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts, and garbage.
  - b. The permittee shall clean the public right-of-way immediately adjacent to the subject establishment before 8:00 a.m. each day. Debris must be swept up and discarded in an appropriate trash receptacle and shall not be swept onto streets, neighboring properties, or storm drains.
  - c. Mechanical equipment used for outside maintenance, including blowers and street sweepers may not be used between 10:00 p.m. and 6:00 a.m. daily.

**APPROVED** and issued on this 17<sup>th</sup> day of December 2010.

Joseph Horwedel, Director  
Planning, Building, and Code Enforcement



Deputy

PLEASE NOTE: Permit not valid for tree removal until after  
January 3, 2010 and until countersigned below:

**PERMIT VALID ON JANUARY 4, 2011**

Joseph Horwedel, Director  
Planning, Building, and Code Enforcement



Deputy